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## ARTICLES

### PROFESSING *PRO BONO*: TO WALK THE TALK

MICHAEL A. MOGILL\*

#### INTRODUCTION

I am one of the fortunate ones. I attended law school with the purpose of going into public service, specifically to represent the indigent in civil matters. Upon my graduation, I began my employment with Georgia Legal Services, initially as a staff attorney and advancing to supervising attorney and then ultimately to managing attorney of three offices in North Georgia. During my tenure of nine years with that program I handled hundreds of cases, in subject areas ranging from domestic relations to consumer problems, from housing to public benefits. There were also rare occasions to work on special education matters and prisoners' rights cases, the latter evolving into class action litigation.

There was no letup in the number of potential clients, given both the nature of poverty and the lack of resources supplied to support the office. But given the seemingly overwhelming number of income-eligible prospective clients, the staff managed to keep their heads above water by the setting of case priorities by our target population and by resorting to limit our intake of new cases when absolutely necessary. Nonetheless, I felt lucky to be practicing in the area of law I relished, fulfilling the goals of my legal education. I was serving the needs of the under-represented, providing access to our legal system.

Admittedly, I shared with others the awareness of burnout as the number of cases mounted and funding for the legal services program decreased. Eventually, I succumbed to the belief that I

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was losing my edge in continuing to represent the indigent in the midst of financial cutbacks and case restrictions. I chose to turn to the private sector, gaining experience as a legislative lobbyist and as a senior litigation associate with a medium-size law firm. Yet, while my pocketbook expanded my heart remained committed to the notion of representing the indigent. Again, I benefited from good fortune—my firm understood those needs and supported the hours I spent away from the office working with my own clients at shelters for battered women and for the homeless.

My professional journey eventually led me back to law school, where my ambition began. However, now I was on the other side of the lectern, separated from actual practice while espousing to students the theory of the law, addressing holdings and rationales, and at times encouraging those future practitioners to consider ministering to the indigent. I myself retreated to the comfort of service on boards of organizations addressing the needs of the low-income population; yet, I was far removed from the daily toil of practice on the front lines. I enjoyed my new career as a teacher, hoping to kindle the spirit of “doing good” while graduates were “doing well” with their professional degrees.

Those years of teaching did not diminish my interest in practice. As my opportunity for a sabbatical arose, I resolved to return to the front lines. Again, good fortune visited and I was able to serve in the local legal services office, working four months on a full-time basis in representing the indigent.<sup>1</sup> In that capacity, I was able to practice what I had preached in the classroom, working side-by-side with student interns in applying what I myself had learned during my years of teaching. I returned to the classroom renewed, able to share experiences of both success and failure with students as part of their learning process.

It was only natural that my thoughts have since wandered again to the importance of serving the indigent. No, I am not considering quitting my day job, given my enjoyment of teaching and the benefits of a career devoted to new ideas and classroom challenges. Yet, I question whether those of us in the academy are doing enough to provide for the needs of those who are under-represented. Accordingly, Part I of this article addresses the need for greater service by law professors to the indigent, in an effort to improve the quality of justice. Part II then discusses the nature of the *pro bono* services, with a focus on the need to

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1. See Michael A. Mogill, *The Education of the Prof: A Work in Progress*, 2000 B.Y.U. EDUC. & L.J. 191.

improve the quality of our commitment to such representation. Part III calls attention to the benefits of the *pro bono* service in improving the quality of our teaching. Finally, Part IV suggests how service to the indigent can improve the quality of our own lives as teachers of the next generation of professionals.

### I. THE NEED FOR SERVICES: IMPROVING THE QUALITY OF JUSTICE

The role of attorneys and the ends of the justice system are inextricably linked. Prior to his tenure on the Supreme Court, Lewis Powell, Jr., in his capacity as President of the American Bar Association, commented that:

Equal justice under law is not merely a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists . . . it is fundamental that justice should be the same, in substance and availability, without regard to economic status.<sup>2</sup>

Legal services programs have historically performed the major portion of work on behalf of the indigent. Yet, it was only in 1965 that legal services programs were first created at the national level, with initial grants and funding provided to fund neighborhood law offices in 1967.<sup>3</sup> Federal support for the program was more firmly established by the creation of the Legal Services Corporation in 1974, which was to provide financial support for these offices.<sup>4</sup> Upon signing this legislation into effect, President Nixon noted that legal services lawyers were to have the "full freedom to protect the best interests of their clients" and underscored that "the nation be encouraged to continue giving the program the support it needs to become a permanent and vital part of the American system of justice."<sup>5</sup> This money

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2. NAT'L LEGAL AID AND DEFENDER ASS'N, LEGAL SERVICES: THE UNMET PROMISE 1.

3. *See id.* at 8.

4. *See id.* The Legal Services Corporation (L.S.C.) is a private, non-profit corporation that receives funding from Congress and disperses grants to local legal aid offices. The staff in these offices use the funds to supply services to the indigent in civil matters. LEGAL SERVICES CORP., PRESS KIT (1999). The L.S.C. funded 258 local programs with its 1999 budget. LEGAL SERVICES CORP., ITEMS OF INTEREST (1999).

5. *Id.* For a more lengthy discussion concerning the creation of the federally-funded legal services program, see CHARLES W. WOLFRAM, MODERN LEGAL ETHICS §§ 16.7.2-16.7.3 (1986). *See also* Alan W. Houseman, *Political Lessons: Legal Services for the Poor—A Commentary*, 83 GEO. L.J. 1669, 1672-79 (1995) (discussing the Office of Economic Opportunity's creation and development).

was to be used by these offices to provide civil legal services to the indigent. The problems that staff handled typically involved areas of government benefits, employment, housing, family law, or consumer disagreements, frequently involving crisis situations which could result in homelessness, loss of a client's sole source of income, or dissolution of the family.<sup>6</sup> By 1976, the Board of the Legal Services Corporation adopted a goal of having two attorneys for every 10,000 poor people in every county of the country and those territories under federal sovereignty as necessary to establish a "minimum foundation" upon which local programs could continue to build.<sup>7</sup> This would further the partnership between the federal government and the private sector in assuring that the legal needs of the indigent were fulfilled.<sup>8</sup>

However, the creation of a federally-funded legal services program did not achieve fruition without opposition. Notably, much of that opposition came from the bar itself, which feared competition for the services of private lawyers and the impact of indigent representation upon the clients of private lawyers, and perceived that federal involvement could result in expanding regulation of the bar.<sup>9</sup> Critics feared that legal services would consist of efforts by "left-wing lawyers" who would be "engaged as self-appointed representatives of the poor in test litigation designed to erode the free enterprise system," with taxpayers subsidizing such "political activities" and advocates not being accountable either at the ballot box or in the market place.<sup>10</sup> Yet, the perceived importance of a federally-funded legal services program led to its bipartisan support, which would provide access to justice, ameliorate the impact of the law against the under-represented, and aid the indigent in assisting themselves.<sup>11</sup> The creation of the Legal Services Corporation would provide an effective means to ameliorate poverty. In overcoming hurdles imposed by the legal system, advocates would avoid the unfair impact of the law and institutions on the poor, helping either to avoid disputes or settle them peacefully, while at the same time enforcing civil law in a just manner.<sup>12</sup> Supporters believed that "[a]ccess to the courts is not just another social or

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6. See LEGAL SERVICES CORP., 1995 ANNUAL REPORT 6.

7. *Id.* at 10.

8. Rhonda McMillion, *No Reprieve for LSC*, A.B.A. J., Sept. 1997, at 96.

9. See Houseman, *supra* note 5, at 1671.

10. Roger C. Cramton, *Why Legal Services for the Poor?*, A.B.A. J., May 1982, at 550.

11. See *id.* at 554.

12. See Thomas Erlich, *Legal Services For Poor People*, 30 CATH. UNIV. L. REV. 483, 488-94 (1980-81).

welfare benefit, but an issue that goes to the moral tone of a society and the legitimacy of its institutions."<sup>13</sup>

Legal services offices serve a broad-ranging clientele. Estimates indicate that fully twenty percent of Americans (roughly, fifty million people) are potentially eligible for legal services, with eligibility capped at 125% of the poverty level.<sup>14</sup> Nationwide, as recently as 1995, the legal services program consisted of over three hundred grantees operating approximately twelve hundred offices across the country.<sup>15</sup> Its clients are diverse, consisting of all ethnicities<sup>16</sup> and ages, with many being formerly middle-class individuals who have fallen upon hard times.<sup>17</sup> Ten percent of the clients are elderly, with their unique health, income, and social needs; seventy-five percent of the cases involve and benefit children, while nearly sixty thousand cases in 1995 alone involved the representation of women seeking protection from abuse as the primary issue.<sup>18</sup> Indeed, two-thirds of legal services clients are women, most of those being mothers with children.<sup>19</sup>

Fully ninety-eight percent of the work performed by legal services providers concerns itself with everyday individual problems like divorce, housing, and consumer issues.<sup>20</sup> Those cases are mainly non-controversial, confronting crises to clients due to possible consequences, ranging from an otherwise ongoing domestic violence situation, an eviction, or loss of income or property. The vast majority of cases are resolved either through advice, brief services, administrative procedures or negotiated settlement; only eight percent are litigated and end in a judicial decision, nearly two-thirds of which are family law cases.<sup>21</sup> Since its inception in 1974, legal services grantees have represented clients in over thirty million cases.<sup>22</sup> In 1992 alone, legal services offices handled 1,548,062 cases; 11.4% were consumer matters, 17.9% income maintenance, 21.1% housing, 32.3% family law,

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13. Cramton, *supra* note 10, at 552.

14. See LEGAL SERVICES CORP., WHAT IS THE LEGAL SERVICES CORPORATION? 1, 2 (1997).

15. See LEGAL SERVICES CORP., *supra* note 6, at 3.

16. Roughly 51.3% are White, 26.2% Black, 16.8% Hispanic, 2.9% Native American, 1.8% Asian or Pacific Islander, and 0.9% Other. See LEGAL SERVICES CORP., *supra* note 14, at 3.

17. See *id.* at 6.

18. See *id.*

19. See *id.* at 3.

20. See Mary Wisniewski Holden, *Clipped Wings and Budget Cuts Tax Legal Aid*, CHICAGO LAWYER, Aug. 1997, at 58, 62.

21. See LEGAL SERVICES CORP., BUDGET REQUEST FOR FISCAL YEAR 9 (1998).

22. See LEGAL SERVICES CORP., 1996 ANNUAL REPORT 6.

3.3% health, 2.5% employment, 2.1% individual rights, 1.1% juvenile, 1.0% education, and 7.3% miscellaneous.<sup>23</sup> This number increased to 1.7 million cases in 1995.<sup>24</sup> At the same time, it was noted that poverty was growing at three times the rate of the general population.<sup>25</sup>

It was perhaps inevitable that legal services programs would be subject to criticism, since those government-funded offices might on occasion sue the government itself in cases where the indigent had disputes with government agencies effecting their lives in cases involving public benefits and housing.<sup>26</sup> Critics viewed the Legal Services Corporation as pursuing a "radical agenda," bent on "engaging in dubious litigation that is of no real benefit to poor people."<sup>27</sup> Others accused legal services advocates of having strayed into a liberal political activism, neglecting the provision of legal aid to the indigent, or being anti-family because of their work on divorce cases.<sup>28</sup> Still others commented that "lawyers funded through federal LSC grants have focused on political causes and class-action lawsuits rather than helping poor Americans solve their legal problems."<sup>29</sup> Nonetheless, those who have responded to this critique have noted that legal services is only serving its clients' true needs:

I recognize there have been periods when the federal legal services program has been controversial. Much of the criticism has been unjustified. When migrant workers and poor individuals assert their legal rights, they can offend powerful interests in society. That does not mean there is something wrong with the program; it means that it is doing its job.<sup>30</sup>

Not surprisingly, the battles waged over government-funded legal services that have raged since its inception have resulted in disagreements over its funding. While the amount appropriated for the Legal Services Corporation in 1980 was \$300 million, that

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23. See LEGAL SERVICES: THE UNMET PROMISE, *supra* note 2, at 3.

24. See LEGAL SERVICES CORP., INCREASING LEGAL SERVICES DELIVERY CAPACITY THROUGH INFORMATION TECHNOLOGY 3 (1996).

25. See LEGAL SERVICES CORP., *supra* note 6, at 6.

26. See Holden, *supra* note 20, at 59.

27. *Appropriations for 1997: Hearings Before the Subcomm. on Commerce, Justice, State and Judiciary of the House Appropriations Comm.*, 104th Cong. Pt. 9, 129, 130 (1996) (testimony of Rep. Dan Burton).

28. See Tom Jackson, *Legal Aid Staff Waits to See if Office Will Survive*, THE SUNDAY CONST. (Lawton, Okla.), Aug. 3, 1997.

29. Andy Thompson, *Proposed cuts in legal services will hurt women*, THE POST-CRESCENT (Appleton, Wis.), Sept. 14, 1997, A-1, A-11.

30. LEGAL SERVICES: THE UNMET PROMISE, *supra* note 2, at 9.

amount had decreased to \$278 million by 1996.<sup>31</sup> Even once funding rose to \$283 million in 1997, proposals circulated in Congress to cut funding by one-half.<sup>32</sup> While Legal Services received \$305 million in 1999, this was still far short of the \$400 million appropriated in 1995,<sup>33</sup> a year prior to the 1996 "year of crisis" in funding, when opponents fought to eliminate funding for legal services through a combination of distortion and misrepresentation of the work performed by local services grantees.<sup>34</sup> This amount pales in comparison to the amount spent on legal services for the poor in other Western countries.<sup>35</sup>

Critics of government-funded legal services have also prevailed in imposing restrictions on certain cases and activities previously addressed by L.S.C. grantees. Those legal services offices receiving federal funds can no longer, among other limitations, file class actions; represent prison inmates or certain categories of aliens; challenge welfare reform measures as unconstitutional or otherwise illegal; receive statutory attorneys fees as a prevailing party; or engage directly or, in grassroots lobbying, on behalf of clients.<sup>36</sup>

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31. See LEGAL SERVICES CORP., FACTS 1 (1997). These cuts, amounting to a 30% decrease in the 1996 budget, when adjusted for inflation, resulted in the lowest amount of funding since 1977, the third year of the existence of the Legal Services Corporation. LEGAL SERVICES CORP., THE IMPACT OF FISCAL YEAR 1996 CUTS ON THE DELIVERY SYSTEM.

32. See Marcia Coyle, *Legal Services Corp. Set for Fight in the House*, THE NAT'L L.J., July 13, 1998, at A10. The appropriation of \$283,000,000 for 1998 was to serve a poverty population of 35.6 million; therefore, the federal funding for low-income person was \$7.94. LEGAL SERVICES CORP., LSC STATISTICS (1999).

33. See Rhonda McMillion, *Capitol Hill Scorecard: Legislative and Governmental Priorities Direct ABA Advocacy in Congress*, A.B.A. J., May 2000, at 88.

34. LEGAL SERVICES CORP., *supra* note 22, at 3.

35. For example, England provides \$1 billion per year in legal services for the poor and lower middle class, though its population is one-fifth that of the United States. Admittedly, the English style is a "judicare" model, with a client selecting her lawyer and the government then compensating that counsel. Ontario spent \$11.40 per capita for legal services in 1993, ten times the amount spent in this country; indeed, the United States provides less money for legal services than any other Western industrial country except Italy. See Holden, *supra* note 20, at 59.

36. See LEGAL SERVICES CORP., *supra* note 22, at 5. Those restrictions, with few exceptions, also apply to funds received from state and local governments and from private sources. *Id.* See The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (OCRAA), § 504(a)(1)-(4), (7), (11), (14), (15), (17). A new restriction added by Congress in 1998 authorizes the L.S.C. to terminate grant awards and institute new grant competition if an existing grantee violates requirements or restrictions and can bar grantees from the competitive bidding process under certain circumstances in addition to adding new public disclosure mandates. See Rhonda McMillion, *Halftime Score*, A.B.A.



The decreases in funding and the restrictions imposed on legal services guarantees have impacted its target population. While the 1976 Board of the Legal Services Corporation had set as its goal the provision of two lawyers for every ten thousand indigents as a *minimum* foundation to build upon, that goal was achieved briefly only in 1980.<sup>37</sup> Funding cuts have since intensified; by 1995, the poor were served by one-third fewer legal services lawyers than were available to them in 1981.<sup>38</sup> The cutbacks in funding led to the closure of more than three hundred neighborhood legal services offices and accompanying reductions in staff by over one thousand lawyers, paralegals, and support staff.<sup>39</sup> The number of cases closed fell from 1.7 million in 1995 to 1.4 million in 1996, a 15% decrease.<sup>40</sup> The loss of funding led to the reduction in the amount of time spent in all manners of service: cases resolved via court decision fell 24%, cases settled during litigation decreased 26%, cases resolved by agency decision dropped 21%, brief services were down 19%, and advice and counsel was cut by 11%.<sup>41</sup>

The closure of legal services offices impacted client access to representation, particularly in rural areas.<sup>42</sup> Even as caseloads were forced to decrease, more than forty million people lived in households below the poverty line, with another eleven million

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J., Feb. 1998, at 80. All of these restrictions have been upheld, except for those barring L.S.C. grantees from challenging existing law in representing individual welfare claimants. See *Velazquez v. Legal Services Corp.*, 164 F.3d 757 (2d Cir. 1999), *cert. granted*, 68 U.S.L.W. 3629 (U.S. Apr. 3, 2000) (No. 99-603, 99-960).

37. See LEGAL SERVICES CORP., *supra* note 6, at 10. By contrast, a report in 1981 indicated that there is one attorney available for every 334 people above the poverty line. See Howard A. Matalan, *The Civil Indigent's Last Chance for Meaningful Access to the Federal Courts: The Indigent Power to Mandate Pro Bono Publico*, 71 B.U.L. REV. 545, 547 n. 12 (1991).

38. See LEGAL SERVICES CORP., *supra* note 6, at 10.

39. See LEGAL SERVICES CORP., POOR FAMILIES TAKE THE HIT AS LEGAL SERVICES BUDGET SHRINKS, press release, May 14, 1997. There had previously been 1200 offices. The number of staff lawyers decreased from 4,500 to less than 3,600, a twenty percent cut from 1995 to 1996. This was less than half the lawyers employed by Legal Services in 1981, the year which represented the peak funding for the L.S.C. *Id.*

40. See *id.*

41. See *id.*

42. See McMillion, *supra* note 8, at 96. The impact of federal cuts can be felt differently in various parts of the country. This is because there is no uniform structure or service areas for legal services programs; local programs range in size from a few \$100,000 in resources with one or two professional staff members to millions of dollars in resources with hundreds of professional staff. Some are wholly dependent on L.S.C. money, while others have significant amounts of non-L.S.C. monetary support. See Houseman, *supra* note 5, at 1688.

plus marginally above it.<sup>43</sup> Existing staff has been effected by budgetary cutbacks eliminating national and state support programs that had provided assistance with expert counsel, materials and training, a national brief bank, an information clearing-house, and regional programs offering computer-assisted legal research.<sup>44</sup>

Studies have shown that the indigent are hopelessly under-represented. Four out of five of their legal needs are not being met.<sup>45</sup> Even in its earlier years, when the L.S.C. received higher funding, its grantees were able to meet only a "small fraction" of the request for services; nearly half of those requests were denied because of budgetary reasons.<sup>46</sup> Budget cutbacks have only exacerbated this problem. These cuts have had a "demoralizing" impact on staff itself, with offices being subject to hiring freezes and a "brain drain" by losing senior staff.<sup>47</sup> The limited resources combined with high levels of government-imposed bureaucracy focusing on compliance with new restrictions and governmental monitoring make it difficult to respond effectively to client needs.<sup>48</sup> Indeed, studies have indicated that those civil litigants who are unrepresented have little chance to obtain discovery, are twice as likely than represented litigants to lose a motion to dismiss, and nine times less able to achieve settlement.<sup>49</sup> In effect, as Whitney Seymour, Jr., past President of the

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43. See Houseman, *supra* note 5, at 1688. Indeed, the number of persons below the poverty line increased dramatically during the 1980's and early 1990's from 37 million in 1984 to 39.3 million in 1993. See LEGAL SERVICES CORP., *supra* note 24, at 3.

44. See LEGAL SERVICES CORP., *supra* note 31, at 2. See also Holden, *supra* note 20, at 58.

45. See Holden, *supra* note 20, at 58. See also LEGAL SERVICES CORP., *supra* note 24, at 3.

46. See LEGAL SERVICES CORP., *supra* note 21, at 12. A nationwide 1989 survey conducted by the American Bar Association on legal news indicated that there was no legal assistance provided for 29 million civil legal problems in 1987 alone; these needs included medical access, utility terminations, discrimination, and consumer problems. See Matalon, *supra* note 37, at 546, n.4.

47. Phyllis J. Holmen, *Georgia Legal Services: Quality Justice for All*, GA. B.J. 1996, at 10, 13.

48. See Houseman, *supra* note 5, at 1688-89.

49. See Gary Rivlin, *Pro Bono For Judges: Is It Possible?*, 22 JUDGES' J. 42, 44 (1983). A 1996 A.B.A. study indicated that 80% of poor Americans do not have legal counsel in serious settlements where a lawyer's advice and assistance would have made a difference. See LEGAL SERVICES CORP., *supra* note 14, at 5. A 1997 study completed by the Lawyers' Committee for Better Housing learned that only 4% of tenants appearing in court *pro se* prevail, while the relatively few tenants who are represented by attorneys win 43% of their cases. See Lawrence Wood, *Keeping Tenants Out of the Cold*, A.B.A. J., Feb. 1998, at 68.

American Bar Association has noted, without legal services, "[p]overty and not the judge, may be deciding the case."<sup>50</sup>

The lack of federally-funded legal services distresses the target indigent population.<sup>51</sup> Cuts in funding or staffing has led to offices having to close intake to new cases for periods of time, subjecting potential clients in public benefits cases to try to sort through new and confusing welfare regulations on their own.<sup>52</sup> Battered women in dire need of assistance from abuse have found legal services counsel less available to seek necessary protective orders and injunctive relief.<sup>53</sup> Such problems, if left unresolved, can fester and become even costlier to society.<sup>54</sup> Unrepresented individuals will lead to more *pro se* filings, placing further burden on litigants and the judiciary.<sup>55</sup> Moreover, current trends suggest the shortfall in legal services for the indigent will continue to grow; the population of potential eligible clients is expected to increase while law and its practice are growing more complex, thereby placing a premium on the need for legal assistance, and federal discretionary spending continues to shrink rapidly.<sup>56</sup> Prospects for future increases in L.S.C. appropriations of sufficient magnitude to address the amount of legal services necessary for the indigent are bleak.<sup>57</sup>

It is necessary that parties have counsel to assure that our civil justice system works properly.<sup>58</sup> The legal process is a complicated one, underscored by laws written by lawyers in a manner requiring legal assistance in their interpretation and application.<sup>59</sup> Yet, there is no constitutional right to counsel in civil cases.<sup>60</sup> Nor is it clear that the court has the inherent authority

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50. Rivlin, *supra* note 49, at 44.

51. See Ovetta Wiggins, *Welfare Recipients Lose a Key Safety Net—Passaic Legal Aid Halts Assistance*, BERGEN COUNTY, N.J. SUNDAY RECORD, Aug. 24, 1997, at A-1, A-18.

52. See *id.* at A-18, A-19.

53. See Thompson, *supra* note 29, at A-1, A-11.

54. See McMillion, *supra* note 8, at 96. See also LEGAL SERVICES CORP., *supra* note 6.

55. See Holmen, *supra* note 47, at 13. Judges are uncomfortable in presiding over cases where litigants are unrepresented and generally have an institutional interest in reducing the number of *pro se* litigants. See Rivlin, *supra* note 49, at 45.

56. See LEGAL SERVICES CORP., *supra* note 24, at 4.

57. See *id.*

58. See Rivlin, *supra* note 49, at 44.

59. See David Luban, *Mandatory Pro Bono: A Workable (and Moral) Plan*, 64 MICH. B.J. 280, 282 (Mar. 1985).

60. See Wendy F. Rau, *The Unmet Legal Needs of the Poor in Maine: Is Mandatory Pro Bono the Answer?*, 43 ME. L. REV. 235, 244 (1991) (While the right to appoint counsel could exist under the Due Process Clause, that right is

to appoint counsel in such matters.<sup>61</sup> While, by contrast, representation is afforded in the criminal justice system, most people who end up in our court system are there on civil matters.<sup>62</sup>

The funding cuts in appropriations and the restrictions in advocacy imposed on the grantees of the Legal Services Corporation undermine our nation's commitment to the ideal of "equal justice for all." The indigent, unable to afford counsel due to their limited means and without recourse to legal services, must face the civil justice system on their own. Yet, this misfortune makes a mockery of the adversarial model we have adopted in a judicial system that "requires effective representation in order to advance the interests of the parties."<sup>63</sup> When the indigent are not afforded sufficient representation to pursue legitimate grievances, we are reminded of Derek Bok's comment that our country has "far too much law for those who can afford it and far too little for those who cannot."<sup>64</sup>

The issue of sufficient funding for legal services programs has clearly been driven by both political and economic agendas. Given the decades of controversy and tightening of the purse strings, it is highly unlikely those programs will receive satisfactory resources to serve the needs of the indigent. The rationing of justice based on the lack of economic means of those deprived access to our justice system belies the promise of "equal justice under the law." The need for services is evident. We, as law professors, are the gatekeepers for our students' entry into the legal profession. We also have the ability to improve the quality of justice by participating in that system itself. Our years in the academy, which have aided in honing our analytical abilities, can be used to assist those in need. Representation matters—we can make a difference for those in need while furthering the commitment to provide such "equal justice."

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generally determined on a case-by-case basis; a presumption exists that there is no right to appointment unless the result of the case could deprive the indigent of physical liberty.). See also *Lassiter v. Dep't of Soc. Serv.*, 452 U.S. 18, 25-27 (1981) (no error committed in failure to appoint counsel in termination of petitioner's parental rights).

61. See Rau, *supra* note 60, at 247.

62. See Page West, *Legal Aid Program Faces Cutbacks, Criticism*, THE GRAND RAPIDS PRESS, Feb. 24, 1997, at A-8.

63. Matalon, *supra* note 37, at 561. Indeed, "[t]hat which is simple, orderly, and necessary to the lawyer, to the untrained layman may appear intricate and mysterious." *Dillon v. United States*, 307 F.2d 445, 449 (9th Cir. 1962).

64. Nancy Grape, *Legal Services Corp. Deserves a Full Presidential Pardon*, MAINE SUNDAY TELEGRAM, Aug. 10, 1997.

## II. SERVING AS A ROLE MODEL: IMPROVING THE QUALITY OF COMMITMENT

While legal services programs bear the laboring oar, their efforts to serve the overwhelming needs of the indigent have been augmented by the private bar. Local program grantees are required to designate an amount equal to one-eighth of their L.S.C. grant to the involvement of private lawyers.<sup>65</sup> In addition, federally-funded grantees depend on the private bar's independent efforts to serve the indigent. Many private attorneys began their careers as legal services lawyers and many have done *pro bono* work as a direct result of that prior employment, thereby raising the consciousness of the profession as they provide service.<sup>66</sup> At an institutional level, the American Bar Association offers various clearinghouse services, publications, and technical aid to support more than 1,000 *pro bono* programs and other organizations.<sup>67</sup> The A.B.A. created the Litigation Assistance Partnership Project (L.A.P.P.) to match significant *pro bono* cases requiring meaningful support with voluntary private firms. Those firms then litigate impact cases requiring substantial legal resources, thereby enhancing resources for the indigent.<sup>68</sup> Moreover, the A.B.A.'s Law Firm *Pro Bono* Challenge targets larger law firms; its efforts have resulted in approximately three million hours of annual service.<sup>69</sup> In addition, bar and legal services groups have established some thirty fund-raising initiatives in recent years, which collectively have raised millions of dollars to support local legal services programs.<sup>70</sup>

The *pro bono* assistance offered by the private bar has been a partial relief to indigents otherwise not afforded access to counsel due to cutbacks in legal services funding. The Legal Services community has responded to those cutbacks by beginning state-by-state planning processes involving legal services offices, the private bar, the judiciary, and other institutions, with a goal of

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65. See LEGAL SERVICES CORP., *supra* note 21, at 11. In addition, the L.S.C. now awards grants through a new system of competition, which expands those eligible for allotments to include private law firms, local governments, statewide planning agencies, and private non-profit corporations. LEGAL SERVICES CORP., *supra* note 22, at 5.

66. See Houseman, *supra* note 5, at 1685 n.70.

67. See Robert A. Stein, *Leader of the Pro Bono Pack*, A.B.A. J., Oct. 1997, at 108.

68. See Joseph P. Esposito, *Matchmaker, Matchmaker*, LITIGATION NEWS, Apr. 1992, at 3.

69. See Jerome J. Shestack, *The Pro Bono Principle*, A.B.A. J., Feb. 1998, at 8.

70. See Jill Schachner Chanen, *In the Wake of IOLTA*, A.B.A. J., Aug. 1998, at 26.

maximizing legal assistance for the indigent in every state.<sup>71</sup> Yet, the representation of the indigent is a difficult area for the private bar because poverty law is a speciality in itself, involving complex statutory and regulatory schemes.<sup>72</sup> Admittedly, Legal Services lawyers as full-time specialists have the necessary experience, commitment, and ability to treat the "whole client."<sup>73</sup> But the cutbacks in funding have resulted in acknowledging a greater need for aid from the private bar, with Legal Services attorneys serving as trainers and mentors for *pro bono* lawyers.<sup>74</sup>

*Pro bono* representation is a means of providing service for a client without charging a fee.<sup>75</sup> Services are thus made available for those who cannot afford payment.<sup>76</sup> Definitions of "*pro bono*" range from the broad, viewing this as any work that a lawyer does of a public nature (including membership on boards or participation in the activities of service clubs or political activities), to narrow, looking only at actual no or low fee representation to needy clients.<sup>77</sup>

Historically, *pro bono* has implicitly included a sense of charitable motivation or public-spirited notion, performed in the "spirit of service to fulfill needs that would otherwise go unmet."<sup>78</sup> Thus, it has a certain uniqueness in providing legal services that would otherwise not be afforded.<sup>79</sup> *Pro bono* work is seen as "morally commendable,"<sup>80</sup> having an aspect of "common decency" by assisting those in need while the attorney "gives

71. See Legal Services Corporation, *supra* note 22, at 3.

72. See Holmen, *supra* note 47, at 16.

73. Justin L. Vigdor, *Pro Bono Service: Mandatory or Voluntary?*, N.Y. ST. B.J., May 1990, at 33.

74. See *id.* at 34.

75. See JACK L. SAMMONS, JR., *LAWYER PROFESSIONALISM* 14 (1998). The term "*pro bono public*" refers to such services offered for the public good. *BLACKS LAW DICTIONARY* 1220-21 (7th ed. 1999).

76. See SAMMONS, JR., *supra* note 75.

77. See Barlow F. Christensen, *The Lawyer's Pro Bono Public Responsibility*, 1 AM. B. FOUND. RES. J. 1, 2 (1981). Critics have commented that the "broad" definitions do not draw necessary distinctions between mere membership ("incidental") as contrasted to service that actually draws on an attorney's analytical and decision-making skills ("instrumental"), while those disapproving of the "narrow" definition view it as too tough of an ideal for all lawyers to achieve. *Id.* Clearly, membership on boards is not unique to attorneys and might be motivated by an attorney's self-interest in currying favor with judges or clients or to shape public policy in light of that attorney's own predictions. Nor do memberships, typically on the boards of symphony orchestras, hospitals, school districts, etc., supply services that would otherwise not be fulfilled by non-attorneys. See WOLFRAM, *supra* note 5, at § 16.9.

78. WOLFRAM, *supra* note 5, at 949.

79. See *id.*

80. Luban, *supra* note 59, at 280.

something back" to the society in which she practices.<sup>81</sup> The obligation to help those in need has been viewed as coming from a common humanity, a simple sense of decency, or the need to preserve a civilized society, or perhaps springing from all three of these sources.<sup>82</sup> As former A.B.A. president Jerome J. Shestack articulated, "from those to whom much is given, much is expected"—society has given the legal profession the singular privilege of practicing law, thereby placing on attorneys their unique responsibility to redress grievances by assisting those in need to ensure access to justice.<sup>83</sup> Others, perhaps more cynically, would find the rationale behind *pro bono* work to be justified by their view that lawyers are overpaid and have a monopoly on legal services.<sup>84</sup> In either event, *pro bono* does provide the opportunity to gain insights into the legal process as it affects indigents, revealing the "warts" and shortcomings in our justice system.<sup>85</sup>

The notion of lawyers having a mandatory *pro bono* responsibility first received serious attention in a 1972 study by the American Bar Foundation, which addressed requiring all attorneys to perform a specified amount of public service work as a condition of licensing.<sup>86</sup> A subsequent A.B.A. Commission commented that legal professionalism is "pursuing a learned art as a common calling in the spirit of public service—no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary

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81. See Jerome J. Shestack, *Defining Our Calling*, A.B.A. J., Sept. 1997, at 8.

82. See Shestack, *supra* note 69, at 8.

83. *Id.*

84. See Harvey Berkman, *Past Struggles Echo as Clinton Makes a Pitch for Pro Bono Work*, NAT'L L.J., Aug. 2, 1999, at A-8.

85. Henry Gabriel, *Juggling Scholarship and Social Commitment: Service to the Community Through Representation of Indigent Criminal Defendants*, 20 N.C. CENT. L.J. 223, 224 (1992).

86. See Christensen, *supra* note 77, at 3 (citing F. RAYMOND MARKO, ET AL., *THE LAWYER, THE PUBLIC, AND PROFESSIONAL RESPONSIBILITY* 288-93 (1972)). Given that English jurisprudence has heavily influenced our legal system, some proponents of mandatory *pro bono* service have turned to see how this topic has been addressed in English courts. However, the English only provide counsel to the poor in limited instances; moreover, the title of "officer of the court" has a different connotation in English law. Sophia M. Deseran, *The Pro Bono Debate and Suggestions for a Workable Program*, 38 CLEV. ST. L. REV. 617, 618-19 (1990). Moreover, while many western European nations once relied on an attorney's charitable nature to provide counsel for the indigent, this concept has been replaced by comprehensive, government-financed programs to serve the poor. See *id.* at 634-35.

purpose.”<sup>87</sup> Thus, the notion became one of professional responsibility for lawyers to serve the indigent in their capacity as officers of the court. This would aid in addressing the substantial unmet needs created by the insufficient funding for legal services.<sup>88</sup>

Early drafts of a Model Rule, directed to *pro bono* obligations, contained a requirement that each attorney perform forty hours of such service each year.<sup>89</sup> Opposition to the mandatory nature of *pro bono* service led to a subsequent draft requiring the performance of some unspecified commitment to the indigent; still further opposition led to the current Model Rule 6.1, which only commends *pro bono* service *without requiring it*.<sup>90</sup> That section, as currently constituted, reads:

**RULE 6.1 Voluntary Pro Bono Publico Service**

A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:
  - (1) persons of limited means or
  - (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:
  - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
  - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or

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87. A.B.A. Comm. on Professionalism, “. . . *In the Spirit of Public Service*”: A *Blueprint for the Rekindling of Legal Professionalism*, 112 F.R.D. 243, 261 (1986) (quoting Roscoe Pound).

88. See Vigdor, *supra* note 73, at 33.

89. See Luban, *supra* note 59, at 280. See also Christensen, *supra* note 77, at 1.

90. See Luban, *supra* note 59, at 280. See also Christensen, *supra* note 77, at 1.



- (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.<sup>91</sup>

This Rule seeks to direct attorneys toward a minimum number of *pro bono* service hours while its language remains aspirational. Further, it provides latitude to provide such work to those "of limited means" by assisting other "persons" or "organizations" that address the needs of such persons. The idea is one of "reciprocity"; since lawyers have contributed to the "legalizing" of society and have a monopoly on access to courts," it is difficult to safeguard one's rights without competent legal assistance. Therefore, lawyers "should" help provide assistance to those who cannot otherwise afford it.<sup>92</sup> One court articulated that representation without compensation:

Is a condition under which lawyers are licensed to practice as officers of the court . . . . An applicant for admission to practice law may justly be deemed to be aware of the traditions of the profession . . . . Thus the lawyer has consented to, and assumed, this obligation and when he is called upon to fulfill it, he cannot contend that it is a "taking of his services."<sup>93</sup>

Model Rule 6.1 has further support from an A.B.A. Formal Opinion, which recognizes that the decrease in the amount of legal services appropriations further places a commitment on the bar to provide funding and free legal services as within the "professional responsibility" of lawyers to serve the disadvantaged by not abandoning indigent clients.<sup>94</sup>

Various state and local bar associations have seized the opportunity to implement various *pro bono* standards that either require representation in a set number of cases per year or the

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91. MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1999).

92. GEOFFREY C. HAZARD, JR. AND W. WILLIAM HODES, *THE LAW OF LAWYERING: A HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT*, VOL. I, 491 (Supp. 1986).

93. *United States v. Dillon*, 346 F.2d 633, 635 (9th Cir. 1965) (citation omitted). The court noted that this obligation is imposed on the attorney "by the ancient traditions of his profession and as an officer assisting the courts in the administration of justice." *Id.* at 636. The United States Supreme Court has indicated that attorneys "occupy professional positions of responsibility and influence that impose on them duties correlative with their vital right of access to the courts." *In re Griffiths*, 413 U.S. 717, 729 (1973).

94. A.B.A. Comm. on Ethics and Professional Responsibility, Formal Op. 347 (1981) (discussing ethical obligations of lawyers to clients of legal services offices when those offices lose funding).

payment of an annual contribution instead.<sup>95</sup> In contrast, New York has attempted to "materially increase pro bono services" by providing for partial credit for *pro bono* work.<sup>96</sup> Minnesota's bar publishes a directory of *pro bono* opportunities for attorneys listing more than seventy organizations offering volunteer opportunities for lawyers, some linked to legal services programs.<sup>97</sup> In addition, some district courts have adopted rules for mandatory *pro bono* concerning indigents in civil cases.<sup>98</sup>

However, not all states have passed mandatory *pro bono* as a requirement to practice within their jurisdictions. Both Washington and Oregon's legislatures considered but failed to enact mandatory *pro bono*.<sup>99</sup> An attempt to require private attorneys in Colorado to provide free legal services to the indigent has led to "heated debate" in the bar, with ninety percent of the Denver Bar Association's members against the idea.<sup>100</sup> Others have suggested that any requirement of *pro bono* services include exceptions for attorneys having financial, emotional, or physical problems; for newly licensed attorneys; for judges and for legal services attorneys.<sup>101</sup>

Those suggesting that *pro bono* services be provided voluntarily have emphasized that lawyers *should* be willing to do so, that compelling services results in wasteful and divisive confrontations.<sup>102</sup> Yet, statistics indicate that many lawyers do no *pro bono* work, and that those who do work either for charitable organizations, or for relatives or friends, or for organizations not involved

95. See Deseran, *supra* note 86, at 632-33.

96. Honorable Judith S. Kaye, State of the Judiciary Address (Jan. 10, 2000), available at <http://www.courts.state.ny.us/ctapps/State00.htm>.

97. See Angela McCaffrey, *Pro Bono in Minnesota: A History of Volunteerism in the Delivery of Civil Legal Services and Low Income Clients*, 13 LAW & INEQ. J. 77, 78 (1994).

98. See Deborah Graham, *Mandatory Pro Bono: the Shape of Things to Come?*, A.B.A. J., Dec. 1987, at 62. While 28 U.S.C. § 1917(d) permits District Courts to request attorneys to represent indigent litigants in civil cases, this section does not allow courts to require such representation. Deseran, *supra* note 86, at 633 n.105 (summarizing holding in *Mallard v. U.S. District Court for S.D. Iowa*, 490 U.S. 296 (1989)).

99. See Graham, *supra* note 98, at 62.

100. Debra Baker, *Mandating Good Works: Colorado Proposal Requiring Pro Bono Draws Fire From Most Lawyers*, A.B.A. J., Mar. 1999, at 22. The proposal also contains a "buyout" feature, where private lawyers are given the option to pay \$1,000, that money going to legal services offices. See *id.*

101. See John R. DeSteiguer, Comment, *Mandatory Pro Bono: The Path to Equal Justice*, 16 PEPPER L. REV. 355, 380-81 (1989).

102. See Sol Wachtler, *Symposium on Mandatory Pro Bono: Introduction*, 19 HOFSTRA L. REV. 739, 743 (1991).

in social change.<sup>103</sup> The private bar feels the pressures of practice, the drive for billable hours, the desire to have a life away from the office.<sup>104</sup> Indeed, the drive for "profit maximization" has led many attorneys to ignore the "public aspect" of the profession and shy away from *pro bono* work.<sup>105</sup>

Those opposing mandatory *pro bono* service have suggested that it unfairly singles out attorneys to provide professional services to the needy.<sup>106</sup> In essence, this view sees poverty as a societal problem and not one for the legal profession to handle, thereby placing a "special tax" upon lawyers that is not visited upon other licensed professions.<sup>107</sup> Even the Honorable Rose Bird, once Chief Justice of the California Supreme Court, who was considered a "liberal jurist," commented that:

I am also of the view that lawyers should not be forced to represent anyone without adequate compensation. The financial burden engendered by ensuring the constitutionally guaranteed right to counsel should not be placed on the shoulders of lawyers. That burden squarely rests with the state. If an attorney takes on the representation of an indigent, he or she should be properly compensated.

As with any other working person, lawyers should be properly compensated for their time and effort. Justice King aptly expressed these sentiments in his concurring opinion in the Court of Appeal. "No one would dare suggest courts have the authority to order a doctor, dentist or any other professional to provide free services, while at the same time telling them they must personally pay their own overhead charges for that time. No crystal ball is necessary to foresee the public outrage which would erupt if we

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103. See WOLFRAM, *supra* note 5, at 950 n.14. Cf. John A. Humbach, *Serving the Public Interest: An Overstated Objective*, 65 A.B.A. J. 564 (1979). Curiously, while 81% of lawyers polled opposed mandatory *pro bono*, 49% of law students favored it. *Law Poll: Public Interest Legal Services*, 68 A.B.A. J. 912 (1982).

104. See Shestack, *supra* note 69, at 8.

105. William Rehnquist, C.J., *The State of the Legal Profession*, 59 N.Y. ST. BAR J., Oct. 1987, at 18, 20.

106. See Ronald H. Silverman, *Conceiving a Lawyer's Legal Duty to the Poor*, 19 HOFSTRA L. REV. 885, 957 (1991). More particularly, this burden could fall disproportionately on large firm attorneys (due to more flexible schedules) or newer lawyers (because they are assumed more likely to practice in areas of law impacting the indigent). See also HAZARD, *supra* note 92, at 497. Any mandate could have a greater effect on the "marginal" or "harried" practitioner who does not have extra hours to "donate" to clients. Luban, *supra* note 59, at 280.

107. See Comm. to Improve the Availability of Legal Services, *Final Report to the Chief Judge of the State of New York* [hereinafter Marrero Report], 19 HOFSTRA L. REV. 755, 781 (1991).

ordered grocery store owners to give indigents two months of free groceries or automobile dealers to give them two months of free cars. Lawyers in our society are entitled to no greater privileges than the butcher, the baker and the candlestick maker; but they certainly are entitled to no less.<sup>108</sup>

Those critics maintain, for example, that accountants are not required to provide financial statements gratis, nor are grocers mandated to provide free food; thus, the imposition of compulsory *pro bono* service on attorneys is both a violation of equal protection and an imposition of involuntary servitude upon attorneys prohibited by the Thirteenth Amendment.<sup>109</sup> Furthermore, a lawyer's time and service is protected "property" under the Fifth Amendment; therefore, mandating *pro bono* serves to unconstitutionally seize that "property."<sup>110</sup>

In addition, some have suggested that mandatory *pro bono* violates an attorney's moral right of choice in whether to give of his time while spoiling the moral significance of what would otherwise be a gift by turning it into a duty.<sup>111</sup> Additional critics

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108. *Yarbrough v. Superior Court*, 702 P.2d 583, 590 (1985) (dissenting). Bird's comments are ironic in light of criticism that service to the indigent has been associated with a "liberal" political view. See John C. Scully, *Mandatory Pro Bono: An Attack on the Constitution*, 19 HOFSTRA L. REV. 1229, 1252 (1991); See also Alan M. Slobodin, *Forced Pro Bono for Law Students is a Bad Idea*, 1 B.U. PUB. INT. L.J. 199 (1991).

109. See Marrero Report, *supra* note 107, at 782; see also Scully, *supra* note 108, at 1258, 1260. One federal court, in refusing to require an attorney to represent a plaintiff in a civil matter, noted that to do so would create a "compulsory rendition of services [which becomes] an involuntary servitude . . . in violation of the 13th Amendment to the United States Constitution." *In re Nine Applications for Appointment of Counsel Title VII Proceedings*, 475 F. Supp. 87, 88 (N.D. Ala. 1979), *vacated by* *White v. U.S. Pipe & Foundry Co.*, 646 F.2d 203 (5th Cir. 1981).

110. See Scully, *supra* note 108, at 1255-57. Accord *Bedford v. Salt Lake City*, 447 P.2d 193, 194-95 (Utah 1968), where the court opined:

The legislature can no more require a lawyer to represent a client for free than it can compel a physician to treat a sick or injured indigent patient without pay. . . . The legal assistance which an attorney renders to a client is his stock in trade; and in order for the attorney to make a living, he must sell his service.

*Bradshaw v. Ball*, 487 S.W.2d 294, 298 (Ky. 1972).

111. See Luban, *supra* note 59, at 280; see also Marrero Report, *supra* note 107. The Florida Supreme Court rejected mandatory *pro bono* by reasoning: The message to lawyer is thus plainly stated. The proposal before us seeks a mandatory enforcement of these stated ethical considerations. Indeed, we may ask, why all the idealistic talk in the Code of Professional Responsibility without a mandatory enforcement of its provisions? Part of the answer to that question lies within the nature of our free society: We have been loathe to coerce involuntary servitude in all

reason that a law license does not provide attorneys with monopoly access to the justice system because a party has the right to appear *pro se* and that the licensing requirement serves only to assure minimum competency and protect the public, not to give attorneys a competitive advantage.<sup>112</sup> Still others suggest First Amendment concerns—participation in a mandatory *pro bono* program may run counter to the lawyer's political and ideological beliefs.<sup>113</sup> Finally, other arguments raised against mandatory *pro bono* suggest it would be "wasteful" in serving the "unworthy," unnecessary because of untapped voluntary *pro bono* possibilities, administratively burdensome in defining obligations and addressing evasions of duty, and unproductive in burdening those without expertise in poverty law.<sup>114</sup>

However, those arguments are "demeaning" to attorneys and the legal profession because a lawyer's role is unlike other professions; lawyers are involved in providing access to justice and are a necessary protector of citizens' lives and liberties.<sup>115</sup> Indeed, attorneys have a "special obligation" to assure that the justice system operates correctly, this mission in part resulting from a professional code which gives lawyers greater public responsibility for self-regulation than other licensed professions.<sup>116</sup> Courts have upheld obligations and restrictions on professional licenses that are rationally related to a legitimate public purpose.<sup>117</sup> Here, the requirement of mandatory *pro bono* would serve the essential goal of providing access to the judicial system for everyone. In reality, "[n]o other profession has a similarly indispensable relationship to a major branch of government responsible for the formulation and implementation of public policy, and in none is public service so much a part of the licensed activity."<sup>118</sup>

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walks of life; we do not forcibly take property without just compensation; we do not mandate acts of charity. We believe that a person's voluntary service to others has to come from within the soul of that person.

*In re Emergency Delivery of Legal Serv. to the Poor*, 432 So.2d 39, 41 (Fla. 1983).

112. See Deseran, *supra* note 86, at 627.

113. See Scully, *supra* note 108, at 1249-50.

114. Silverman, *supra* note 106, at 956-58.

115. See Marrero Report, *supra* note 107, at 782.

116. *Id.* at 783.

117. See Steven B. Rosenfeld, *Mandatory Pro Bono: Historical and Constitutional Perspectives*, 2 CARDOZO L. REV. 255, 294-95 (1981).

118. William B. Fisch, *Coercive Appointments of Counsel in Civil Cases In Forum Pauperis: An Easy Case Makes Hard Law*, 50 MO. L. REV. 527, 539 (1985).

Moreover, if lawyers are treated differently than other professions concerning *pro bono* obligations, it is because the law itself is different in serving as the "glue" that holds the community together.<sup>119</sup> Lawyers have been granted the exclusive privilege to maintain and operate the legal infrastructure; their unique training and skills qualify them to fulfill the need for legal services as a "quid pro quo" of that license.<sup>120</sup> Such public service should not be viewed as charity but purely as professional acts and consistent with the rules governing the profession, thereby fulfilling the attorney's duty to assure justice for the indigent.<sup>121</sup> The license provided to the attorney allows for substantial economic benefits to him, thereby outweighing the "costs" of *pro bono* service. Nor does compulsory *pro bono* detract from the moral significance of the lawyer's choice; he is meeting the aspirations of affording access to the legal system and could make a positive difference in his client's life.

The attorney who provides mandatory *pro bono* has not lost "property" without just compensation because he has suffered no taking of his services—he is an "officer of the court obligated to represent indigents for little or no compensation upon court order [and] . . . has consented to, and assumed, this obligation."<sup>122</sup> The performance of *pro bono* activities thus fulfills this preexisting obligation that the attorney undertook when entering the profession. Nor does the Thirteenth Amendment deter the requirement of *pro bono* service. That provision was to abolish slavery; the law is a regulated industry permeated by the public interest, thereby sustaining the requirement that an attorney provide a limited amount of time to further our justice system.<sup>123</sup>

It has been suggested that participation in *pro bono* is already at an all-time high, with more than 130,000 lawyers registered in such activities, most as voluntary lawyers associated with programs funded by the Legal Services Corporation.<sup>124</sup> However,

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119. Roger C. Cramton, *Mandatory Pro Bono*, 19 HOFSTRA L. REV. 1113, 1134 (1991).

120. *Id.*

121. See Marrero Report, *supra* note 107, at 783.

122. *United States v. Dillon*, 346 F.2d 633, 635 (9th Cir. 1965). *Accord* Ex Parte Sparks, 368 So.2d 528, 532 (Ala. 1979).

123. See Cramton, *supra* note 119, at 1132. "[T]he enforcement of civil rights by compelling the incidental giving of personal services cannot be considered an imposition of involuntary servitude." *Dillon*, 346 F.2d at 634 (quoting the government's brief).

124. See LEGAL SERVICES CORP., *supra* note 21, at 11. Even if this number was doubled or tripled, it would be insufficient to replace the loss of full-time legal services lawyers resulting from budget cutbacks. Still, this is a marked increase since the early 1980s.

*pro bono* services, while necessary, cannot address the gap left by the federal cuts; as Legal Services Corporation Board Chairman Douglas S. Eakeley observed, "the considerable efforts of the private attorneys have not been able to offset the service reductions due to the recent cuts, let alone address the pre-existing gap between need and availability of services."<sup>125</sup> The further decimation of the legal services budget would destroy the intake and referral structure upon which most *pro bono* services are provided.<sup>126</sup> Moreover, the current climate for voluntary *pro bono* is not encouraging, with lawyers being pushed hard to do for-profit work at their firms and realizing that *pro bono* activities could hurt their compensation.<sup>127</sup> There is also little chance that already over-extended states and localities will pick up any additional requests for legal services funding.<sup>128</sup> While some states and localities have shown a long history of support for legal services, many have not; further cuts or the elimination of federal funding could leave those areas bereft of any legal assistance for the indigent.<sup>129</sup>

Some states have responded to the shortfall in federal funding by increasing license fees to help sagging legal services budgets.<sup>130</sup> These increases were seen as within the power of the courts in furthering the "administration of justice," although some concern has been raised that the increases could lead to some lawyers dropping their membership in protest of the increase being a "user tax" on lawyers.<sup>131</sup> In addition, every state except Indiana now has an Interest on Law Trust Accounts

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125. LEGAL SERVICES CORP., *supra* note 39, at 1.

126. See LEGAL SERVICES CORP., *supra* note 21, at 5.

127. See Holden, *supra* note 20, at 63. Some have expressed fear that the escalating salaries for first-year associates at big firms will drain the supply of lawyers from those firms providing *pro bono* services. See Mark Hansen, *Trickle-Away Economies? Cost of High First-Year Salaries May be Borne by Pro Bono Recipients*, A.B.A. J., July 2000, at 20. The concern is raised because those firms will expect those associates to bill more hours as a *quid pro quo* for higher salaries, thus reducing *pro bono* time; indeed, a spillover effect could occur if law schools raise professor salaries in order to compete for faculty, thereby increasing tuition and resulting in fewer graduates working in the public interest sector due to higher educational debt load. *Id.*

128. See LEGAL SERVICES CORP., *supra* note 21, at 10.

129. See LEGAL SERVICES CORP., *supra* note 22, at 10.

130. See Terry Carter, *Cash Counsel: Supreme Courts in Two States Require Lawyers to Pay High License Fees to Help Fund Legal Aid*, A.B.A. J., June 1997, at 38. These increases were \$50 in Ohio and Minnesota, for example. *Id.* Other states have based increases on an attorney's years of practice and annual income or have increased court filing fees to generate income for legal services. Chanen, *supra* note 70, at 26.

131. Carter, *supra* note 130, at 38.

(I.O.L.T.A.) program in effect, which requires attorneys to place certain client funds in interest-bearing trust accounts.<sup>132</sup> These programs have raised nearly \$100 million per year and are essential in funding legal services and other programs serving the legal needs of the indigent.<sup>133</sup>

Law schools have also contributed to bridging the gap caused by funding decreases to legal services through students serving low income clients in law school clinics.<sup>134</sup> The schools provide necessary training to the students in the field of poverty law and provide faculty supervision as students represent the indigent.<sup>135</sup> These clinics are viewed as providing an "invaluable contribution" to the student's legal education, enhancing skills and competency along with addressing values of professionalism while students put classroom-learned theory into practice.<sup>136</sup> Such public service reaffirms in students the strong message of taking the ideals of the legal profession seriously and committing oneself to access to justice and civic involvement. In essence, such clinics foster the ethics of the legal profession while students learn and apply their knowledge and skills to assist the indigent.

In addition, some schools have gone a step further by mandating *pro bono* service as a requirement for graduation.<sup>137</sup> Stu-

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132. See Jill Schachner Chanan, *Not With My Money You Don't: Conservative Group Tries to Shut Down Lawyer Trust Account Payouts*, A.B.A. J., Nov. 1997, at 42.

133. *Id.* IOLTA programs are currently being challenged as being an unconstitutional taking of clients' property under the Fifth Amendment. The Supreme Court held such funds to be the private property of clients and remanded the case to determine if there was a "taking" within the meaning of the Fifth Amendment, and if so, the amount of "just compensation" due. *Phillips v. Washington Legal Found.*, 524 U.S. 156 (1998). On remand, the District Court held that the holding of client funds and channeling it to legal services programs is not a "taking" in violation of the Fifth Amendment. *Washington Legal Foundation v. Texas Equal Access to Justice Foundation*, No. A-94-CA-081 JN (W.D. Tex. Jan. 28, 2000). The case has been appealed to the Fifth Circuit Court of Appeals. Margaret Graham Tebo, *An OK for IOLTA: Legal-Services Funding Scheme Wins Round in Federal Court*, A.B.A. J., May 2000, at 84.

134. A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM* (1992), at 54 [hereinafter *MACCRATE REPORT*].

135. See *id.* Virtually all A.B.A.-accredited law schools have either "simulated and[/or] live-client clinics, many taught by full-time faculty eligible for tenure or equivalent job security." John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, in *THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM*, CONFERENCE PROCEEDINGS (Joan S. Howland & William H. Lindberg eds., 1994), at 38.

136. *MACCRATE REPORT*, *supra* note 134, at 238.

137. See Caroline Durham, *Law Schools Making a Difference: An Examination of Public Service Requirements*, 13 *LAW & INEQ. J.* 39, 40 n.7 (1994). Others have



dents have commented with enthusiasm about their experiences in working with the poor, expressing how their work sensitized them to the "burdens of poverty" and provided a "tremendous confidence builder" to their professional growth, in addition to committing them to find "room in my work life for pro bono."<sup>138</sup> Nonetheless, the debate remains whether such participation should be mandated as part of the student's education or is an imposition of an undue moral requirement.<sup>139</sup>

Even with the contribution of *pro bono* services by the private bar and law schools and the various methods used by states and localities to raise funding to address federal cutbacks, far too many low-income persons remain unrepresented.<sup>140</sup> Filings *pro se* have increased, placing greater strain on litigants and the judiciary.<sup>141</sup> Many judges have traditionally reacted hostilely to actions filed *in forma pauperis*,<sup>142</sup> unrepresented litigants face even lower possibilities of success without benefit of counsel.

Law professors can assist in improving the equality of commitment to the indigent by serving as their counsel. The Model Rules themselves do not address specifically the law professor's professional service obligation.<sup>143</sup> A.B.A. Standard for Approval of Law Schools 404 states that "[a] law school shall establish policies with respect to a faculty member's responsibilities in . . . professional activities outside the law school [and] . . . should address . . . [o]bligations to the public, including participation in pro bono activities."<sup>144</sup> Again, the language of this ("should")

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voluntary public service programs. *Id.* at 41 n.8. At Dickinson, students are encouraged to participate in *pro bono* legal work but do not receive academic credit for this work. Barbara Philips Long, *Pro Bono Service Benefits Students, Lawyers*, THE SENTINEL (Carlisle, Pa.), May 7, 2000, at B-9. The school recently received the Louis J. Goffman Award for its organized *pro bono* service, an award given by the Pennsylvania Bar Foundation. *Id.*

138. Carl Oxholm III, *Penn Public Interest Program Gets 'A' Grade From Students*, THE LEGAL INTELLIGENCER, Apr. 20, 1992, at 7, 8, 9. See also Long, *supra* note 137.

139. See Francesco R. Barbera, *Yard Work: Harvard Law Revives Mandatory Pro Bono Debate*, A.B.A. J., May 2000, at 26. The A.B.A. standards provide that law schools "should encourage and provide opportunities for student participation in pro bono activities." *Id.*

140. Nearly four out of five of the legal needs of the indigent are not being met. See Holden, *supra* note 20, at 58.

141. See Holmen, *supra* note 47, at 13.

142. See Matalan, *supra* note 37, at 26.

143. By contrast, some states have exemptions from any *pro bono* responsibilities for full-time professors at accredited law schools. See, e.g., Calif. Attorneys and State Bar Rule § 6.1.3 (West 2000).

144. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, STANDARDS FOR APPROVAL OF LAW SCHOOLS, 53-54 (1998).

standard suggests less than an obligation to perform *pro bono* representation. The By-Laws of the Association of American Law Schools (A.A.L.S.) also does not provide a mandate for counsel by faculty, section 6-5 merely reminding faculty that "[p]rofessional activities outside the law school are not precluded if so limited as not to divert the teacher from the primary interest and duty as a legal educator."<sup>145</sup>

Faculty members who perform *pro bono* service help to provide not only assistance for the less fortunate but act as role models for their students. Law professors will have taken a further step and done "our part by doing all we can to educate students to be good lawyers."<sup>146</sup> The law professor will have taught his students, by stepping outside the "tower," that *pro bono* responsibilities are part of being a good attorney, and that the granting of a license brings with it a commitment to perform services for the needs of the indigent. He will have led by doing, not merely sensitizing his students to the legal needs of the poor while behind the lectern, but showing how to satisfy those needs through public service in the greater community. Thus, he will serve as an inspiration, not a mere aspiration, to budding graduates.

Some fear that students graduate law school with lesser ideals than when they matriculated, filled with greater cynicism about the profession.<sup>147</sup> The law professor who performs *pro bono* services for the needy instills his students with professional values of service from the beginning of their educations. He is involved in a manner that will inspire others to give of their own time, to want to do "good," not just "well." This can provide a reminder to students of the service aspect of our profession, our commitment to benefit those with lesser means by providing access to the legal system. By so doing, the law professor will have actively promoted ideas and attitudes of professional responsibility and societal commitment in his students. His example will live on through the work of students emulating those good works.

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145. ASSOCIATION OF AMERICAN LAW SCHOOLS, BYLAWS (1971) (amended 2000), available at <http://www.aals.org/bylaws.html>.

146. Timothy W. Floyd, *Legal Education and the Vision Thing*, 31 GA. L. REV. 853, 878 (1997). Moral exhortation alone is insufficient to properly prepare students for their professional responsibilities; acting by example will better guide students to serve the public interest and fulfill their occupational duty to assist the indigent. Stephen Wizner, *Is Learning to "Think Like a Lawyer" Enough?*, 17 YALE L. & POL'Y REV. 583, 584, 592 (1998).

147. Jerome J. Shestack, *Pervasive Professionalism Must Be Part of Legal Education*, A.B.A. J., Mar. 1998, at 6. Some 40% of incoming students are interested in public service legal careers but only 3% pursue those upon graduation. See Deseran, *supra* note 86, at 647.

### III. ASSISTING PROFESSIONAL DEVELOPMENT: IMPROVING THE QUALITY OF TEACHING

It has been said that "those who do, do; those who can't, teach." While this aphorism has not in my experience in the academy been borne out, there is little doubt that practice can assist the professor in the classroom. Practice provides a truly intensive application of materials conveyed in the classroom, an opportunity to experience firsthand what has been theorized from the lectern. The real life "lab" outside of the academic tower provides for the intensive study via the submission of rules of evidence and procedure, the presentation of remedies, and the exercise of strategies on behalf of clients, all while keeping abreast of developments in the law in the most personal manner. The "practicing professor" soon realizes how the rules are really applied, as separate from how course books idealize them, thereby building a valuable reservoir of knowledge to share with her students. The law school lab consists of the casebook and the library, not that of the law office or the courtroom—the two combined further our students' education.

It has been suggested that law schools have consciously distanced themselves from legal practice to stay "above the fray" and avoid addressing "values education."<sup>148</sup> The "scientific" case method pioneered by Dean Christopher Columbus Langdell at Harvard Law School remains the general teaching method. While Langdell had practiced some law, he dismissed the need for law professors having real experience, stating that "[w]hat qualifies a person . . . to teach law, is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of cases, not experience, in short, in using law, but experience in learning law."<sup>149</sup> Indeed some faculty exhibit disdain toward practice, one commenting that "I practiced law for about a year, didn't like it and never wanted to do it again . . . . It's part of the educational process, and presumably we've already been educated."<sup>150</sup> Judge Harry T.

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148. Stephen F. Befort and Eric S. Janus, *The Role of Legal Education in Instilling an Ethos of Public Service Among Law Students: Towards a Collaboration Between the Profession and the Academy on Professional Values*, 13 LAW & INEQ. J. 1, 6-7 (1994).

149. Talbot "Sandy" D'Alemberte, *Keynote Address*, in MACCRATE REPORT, *supra* note 134, at 7.

150. Comments of Professor Harvey Couch, Tulane Law School, in Jane Easter Bahls, *Doing Good Time: Should Pro Bono be Mandatory in Law School?*, 21 STUDENT LAW. Oct. 1992, at 15, 19. This comment is not atypical. Timothy W. Floyd writes, "Most law professors did not practice for very long, and they did not like it when they did. For most, their practice experience was as an associ-

Edwards, in a 1988 speech to a conference of the Association of American Schools, noted the gap between law teachers and the profession:

Worse still is the attitude of active disdain for law practice that one continues to find too frequently among law faculties . . . . It seems the height of absurdity to do without the services of young scholars who are inclined to devote a meaningful portion of their careers to bridging the gap between these two worlds . . . . We cannot afford the luxury of allowing law teachers to adopt either the posture of pure reflection, which ignores the profession, or that of active disdain for it.<sup>151</sup>

Law schools must play a more active role in "fostering [notions] and attitudes of professional and societal responsibility in their students."<sup>152</sup> Few would question that attorneys occupy important public roles in our society, traditionally exercising a disproportionate influence in policymaking at every level of government. Lawyers help to shape society, their influence extending beyond their representation of individual clients. By providing access to the courts, attorneys serve as "gatekeepers of justice," assuring people receive needed representation to address their grievances in court. Law faculty must acknowledge that "part of our jobs as teachers is to teach students what it means to be responsible lawyers."<sup>153</sup> In so doing, law professors will be responding to Judge Frank's criticism:

What would one say of a medical school where the students never saw an actual surgical operation, never watched a physician diagnosing the conditions of actual patients and prescribing for them? . . . Why not have the [law] students directly observe the real subject matter they're supposed to study, with teachers acting as enlightened interpreters of what the students observe?<sup>154</sup>

The law professor who practices a commitment to help the indigent will serve as a more effective "enlightened interpreter" for

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ate in a large firm, work which is hardly typical of what most lawyers do." Floyd, *supra* note 146, at 854.

151. D'Alemberte, *supra* note 149, at 12. Judge Edwards believes many law faculty members consider themselves "academics first and lawyers only by the sheerest of happenstance." J. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 35 (1992).

152. Deseren, *supra* note 86, at 647.

153. Howard Lesnick, *Why Pro Bono in Law Schools*, 13 LAW & INEQ. J. 25, 26 (1994).

154. J. Jerome Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20, 28-29 (1951).

his students. He will have earned the firsthand experience critical to his role of conveying the sense of importance in such service, while adding to the view that law schools are the best place to initiate ideas of attorneys standing as the protectors of a just legal system.<sup>155</sup>

The professor's *pro bono* experiences will augment his knowledge base and provide experience to share and discuss with his students. This will necessarily enrich the curriculum and enhance the learning experience from *both* sides of the lectern. Students and practitioners, in identifying the "ideal" persona of a law professor, stressed the "need for practical experience to be able to teach law effectively."<sup>156</sup> This real-life exposure to clients, discussed with students in the classroom, furthers the analytical mindset of learning to "think like a lawyer," because training students to do so requires that "the professor must be a lawyer, a person who has substantial successful practice experience that can be combined with theory to show students the way things actually are done."<sup>157</sup> The real life "research" of practice will inform the professor's teaching, but in a manner different than mere scholarship alone does. The professor will be more able to teach practical skills, as well as to inspire students to the ideals of the profession. The practicing bar may no longer comment on the deficiencies in skills of the graduating students, having long lamented that "[t]hey can't draft a contract, they can't write, they've never seen a summons, the professors have never been inside a courtroom."<sup>158</sup>

Experiential learning outside the tower can also increase the professor's confidence as she gains insights into the strengths and weaknesses of the legal system, particularly as these affect the indigent. Such experiences, as shared with the students as part of the classroom dialogue, will be a clear message of the importance of *pro bono* activities. By assisting her own professional development, the professor has advanced that of her students, adding firsthand legitimacy to the representation of the poor and underrepresented.<sup>159</sup> These students will thus be more

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155. See Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 STAN. L. REV. 1695, 1696 (1993).

156. Douglas D. McFarland, *Students and Practicing Lawyers Identify the Ideal Law Professor*, 36 J. LEGAL EDUC. 93, 103 (1986).

157. *Id.* at 101.

158. MACCRATE REPORT, *supra* note 134, at 4.

159. See Chaifetz, *supra* note 155, at 1709. This is of particular importance, because studies show a move away from public interest law towards business related legal work occurs during law school. *Id.* at 1702. This is partly due to the lack of emphasis on issues associated with the disadvantaged. ROBERT V.

ready to practice their craft on behalf of those in need. They will have been prepared to do so by “‘practical’ scholars, who attend to concrete legal problems in their scholarship, and ideally have practiced law themselves, [and who] are much better suited to teach law students what ethical practice means.”<sup>160</sup>

Very few law schools have a mandatory *pro bono* obligation for their faculty.<sup>161</sup> It has been suggested that such work could actually harm a professor’s academic career, being viewed either as a dilution of the “central teaching mission” of the school, garnering resentment either from those not contributing or those who do and see this as an infringement on their “inviolable” ground, or by the lack of support from the school itself for the activity.<sup>162</sup> While the need exists for a program to serve the indigent, a broad view may see this exigency met in a variety of ways: through direct client contact, working with public service organizations, advising governmental officials, preparing and lecturing in continuing legal education programs, legislative drafting, and other law reform activities. The nature of the contact may differ, but the goal is the same: to serve the needs of the poor.<sup>163</sup>

The law professor will benefit from his time of practice, adding to his knowledge and subsequently exposing his students to the practical implications of the law. His students will have an enhanced perspective on the legal system and learn more thoroughly the responsibilities of professionalism. Theory will be connected to practice, as the interaction between teacher and client, other attorneys, and the courts provides for additional learning opportunities once discussed in the classroom. As the professor fosters his professional development, he will advance the quality of his teaching.

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STOVER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL 57-58 (Howard S. Erlanger ed. 1989).

160. Edwards, *supra* note 151, at 74.

161. Stetson, for example, requires faculty and students each to do ten hours of public service annually. See Bahls, *supra* note 150, at 19; Southern Methodist requires its faculty to “engage in public interest legal services consistent with the public requirement for students.” Southern Methodist University School of Law Public Service Program (in-house memo) (on file with author). Students are required to perform thirty hours of service. *Id.*

162. Gabriel, *supra* note 85, at 226.

163. This will also hopefully satisfy those who suggest that placements across a range of the spectrum are necessary to avoid political indoctrination. Bahls, *supra* note 150, at 18.

#### IV. ENRICHING OUR WORK ENVIRONMENT: IMPROVING THE QUALITY OF LIFE

Law professors are fortunate in their vocations.<sup>164</sup> Each day brings the potential of exposure to new ideas, as we share in dialogues with our students, occasionally see a "light bulb" illuminate in the classroom (sometimes our own), articulate concepts in our scholarship and have the opportunity to contribute to the governance of our institutions. We also have the privilege to assist the underrepresented, thereby providing a service to the community and the system of justice. This "fringe benefit" is augmented by the reality that law professors are detached from the pressures of daily practice, without ongoing ties to particular clients.<sup>165</sup>

Law professors serving as "lawyers" have in recent years become increasingly common; legal scholars having appeared regularly before the Supreme Court or having formal relations of counsel with firms, partaking in part-time practice, or serving as occasional consultants.<sup>166</sup> Others have expanded their participation in the work of the profession as members of bar association committees, continuing legal education panels, reporters for the American Law Institute, and as speakers at A.B.A. and A.A.L.S. programs.<sup>167</sup> Our expertise from years in the academy can be of significant value both to clients in need and to the judiciary. At the same time, the law professor can assist the community in filling a gap caused by diminishing resources available for legal services programs, add to his own understanding of public problems, and aid the indigent, thereby becoming part of the solution to the vexing problems caused by lack of access to the legal system.

The law professor who does not provide *pro bono* service has missed the opportunity to perform work that is a "memorable and fulfilling . . . part of the joy of our profession."<sup>168</sup> He has lost the chance to play a greater role in society and to gain a greater respect from his students. He has further ignored the chance to remind future attorneys of their professional duties by having

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164. Attendance at faculty meetings, notwithstanding.

165. Monroe H. Freedman, *The Professional Responsibility of the Law Professor: Three Neglected Questions*, 39 VAND. L. REV. 275, 275 (1986). The demands of keeping up with course materials, maintaining regular office hours, and pursuing a reasonable schedule of scholarship do not allow sufficient time for a full-time professor to practice on a full-time basis. Gabriel, *supra* note 85, at 227.

166. See Jonathan L. Entin, *The Law Professor as Advocate*, 38 CASE W. RES. L. REV. 512, 522-23 (1988).

167. See, e.g., MACCRATE REPORT, *supra* note 134, at 5-6.

168. See Shestack, *supra* note 69, at 8.

shared necessary lawyering skills with his students via his *pro bono* work, showing "the way things are actually done."<sup>169</sup> Students will see the law as less impersonal and abstract through their professor's experiences in the justice system, thus enriching the dialogue in the classroom as teacher is elevated to practitioner and not merely viewed as an ivory tower ideologue. The professor through his own "good deeds" will have helped to shape his students towards a commitment to assisting those in need, through taking a step in the direction of improving the public perception of the legal profession and raising its integrity in the eyes of the public.<sup>170</sup> The rewards will be shared by both the clients *and* the students thus served by the professor-practitioner.

We all need to experience growth and renewal in our daily work lives. *Pro bono* service offers the excitement of new challenges, the avoidance of repeated tedium. By being personally involved in assuring the indigent receive counsel, the law professor can better avoid feelings of staleness and burnout, recognizing the inner satisfaction of a job well done. She will have afforded herself a sojourn from the isolation of the classroom. *Pro bono* service will cause professors to explore "hard thinking about the law," preventing teachers "from getting too soft in the way we talk about the law in the classroom and write about the law in our scholarship."<sup>171</sup> The gap between the ideal expectations of the classroom and the sometimes harsh reality of the real world will thus be considerably lessened for both the professor and her students. By using the law to improve the quality of life for the indigent, she will have bettered the community and her own life.

## V. CLOSING THOUGHTS

The time spent by the law professor in performing *pro bono* service meets many needs. This service addresses the cutbacks in legal services appropriations, thereby affirming the professor's commitment to providing access to the justice system. It furnishes a model for her students, who will more likely endeavor to emulate their teacher by displaying their own commitments to the needy in their future practices. The professor's practical experience will enhance the quality of her teaching, thus assist-

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169. See McFarland, *supra* note 156, at 100.

170. It is no great secret that attorneys are not held in high esteem by the general populace. The public has indicated "strongly rooted dissatisfactions with some aspects of the way the system works and how lawyers practice their skills. See Gary A. Hengstler, *Vox Populi, The Public Perception of Lawyers: ABA Poll*, A.B.A. J., Sept. 1993, at 60.

171. Gabriel, *supra* note 85, at 228.



ing one's professional development and growth as a teacher and scholar. Further, the professor's quality of life will be enriched by his contributions to the poor and the worth of his participation in the life of the legal profession.

In providing these *pro bono* services, the professor will have shared his expertise with his clients outside the tower, his "clients" (i.e., students) inside the classroom, and the judiciary. He will have enabled people to participate in the legal system. Given the increasing attention to the need for lawyers to do *pro bono*, let us address that concern with a commitment to perform those obligations so that all of society will benefit in a true qualitative sense. We cannot remain on the inside looking out, nor stay above the fray. Quality matters—it is up to us to walk the talk and to make the "grade" beyond the tower.